

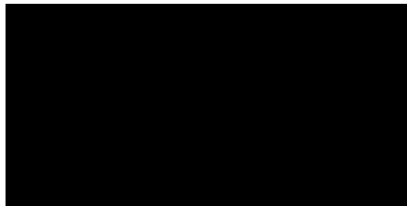


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Public Copy

File: [Redacted] Office: Vermont Service Center

Date: JAN 10 2000

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER: Self-represented

Identifying data is redacted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner for Examinations dismissed an appeal from the decision. The matter is again before the Associate Commissioner on motion to reconsider. The motion will be dismissed.

The petitioner is a church that seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), in order to employ him as a "missionary" at an annual salary of \$7,000.

The director denied the petition finding, in pertinent part, that the petitioner had failed to establish that the duties of the position constituted a qualifying religious occupation, that the duties of the proposed position would be changed from part-time to full-time, and that the proffered salary was insufficient to show that the alien would not become dependent on supplemental employment.

The Associate Commissioner, through the Administrative Appeals Office (AAO), held on appeal that the petitioner provided no documentary evidence that the beneficiary was remunerated by the church for the two years preceding filing as claimed, that the description of the duties of the position was insufficient to demonstrate that the position was a qualifying religious occupation, and that the petitioner's federal tax returns did not show sufficient funds to pay the proffered wage.

On motion, an official of the petitioning church argued that the Associate Commissioner failed to consider evidence of the beneficiary's past employment such as the church's quarterly withholding statements and copies of a "few" cancelled checks from his wages. The official also repeated the argument that the beneficiary completed missionary training classes at the church and that the position is a qualifying religious occupation. The official finally argued that religious worker petitions should not be put under the same strict scrutiny as secular employment-based visa petitions due to the inherent limited resources of religious organizations.

According to 8 C.F.R. 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. 103.5(a)(4) further states that a motion that does not meet applicable requirements shall be dismissed.

To prevail on a motion for reconsideration, the petitioner must establish that the prior decision rests on an incorrect application of law, so that the decision "was incorrect based on the evidence

of record at the time of the initial decision." 8 C.F.R. 103.5(a)(3). After a careful review of the petitioner's arguments in support of reconsideration, it is concluded that the prior decision was correct.

The petitioner's argument that the evidence originally submitted was not considered in the appellate decision is not supported by the record. The petitioner submitted copies of various federal quarterly withholding statements and copies of W-2 wage statements for its employees, however none of those documents list the beneficiary as an employee. The record contains a single canceled check payable to the beneficiary, but as noted by the center director this evidence is insufficient to sustain the petitioner's claim of past continuous employment. The record does contain W-2 tax statements verifying the beneficiary's employment in a secular business endeavor, but this documentation only confirms the finding that the beneficiary was not engaged in religious work as his occupation.

The petitioner's assertions that the proposed position of missionary is a qualifying religious occupation are a reiteration of its previous claims. The petitioner did not submit pertinent precedent decisions showing that the decision was an incorrect application of law.

The request that the petition be adjudicated under more preferential standards is beyond the discretion of the Service. The Service is delegated the authority to administer the provision of immigration benefits provided for under the Act and under its published implementing regulations. The Service cannot exceed this authority.

**ORDER:** The motion is dismissed.